Nos. 84-835, 84-776

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

STATE OF NEW JERSEY,
DEPARTMENT OF CORRECTIONS,
Petitioner,

v.

RICHARD NASH,
Respondent.

and

PHILIP S. CARCHMAN,
MERCER COUNTY PROSECUTOR,
Petitioner,

v.

RICHARD NASH,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF FOR RESPONDENT

JOSEPH H. RODRIGUEZ
Public Defender of New Jersey

LOIS DE JULIO
First Assistant Deputy Public Defender
Counsel of Record

JOHN BURKE III
Assistant Deputy Public Defender

Appellate Section
20 Evergreen Place
East Orange, New Jersey 07018
(201) 266-1800

Attorneys for Respondent

M. VIRGINIA BARTA
Assistant Deputy Public Defender

37 pp

QUESTION PRESENTED

Did the Court of Appeals correctly hold that Article III of the Interstate Agreement on Detainers, as evidenced by the language of the Agreement and its explicit legislative history, applies to detainers based upon probation violation complaints?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Authorities Continued

Table of Authorities Continued

Table of Authorities Continued

STATEMENT OF THE CASE

On June 21, 1978, the Mercer County Probation Department of the State of New Jersey filed a detainer against the respondent Richard Nash who was then incarcerated in Pennsylvania upon various charges. The detainer charged that the respondent had violated the conditions of his probation by having been charged with a crime in Pennsylvania while on probation from New Jersey. After respondent began service of his Pennsylvania sentence, he perfected his request for a final disposition of the detainer under the Interstate Agreement on Detainers (hereinafter Agreement). *N.J. Stat. Ann.* § 2A:159A-1 *et. seq.* (West 1971)[1] While acknowledging the applicability of the Agreement to respondent's probation violation complaint, the Mercer County Prosecutor failed to return respondent to New Jersey for a final disposition of the detainer within the statutorily prescribed time period.[2]

---

[1] The Detainer Agreement is reproduced in the Appendix at App. 110-124 filed simultaneously and bound with the Petition for Certiorari submitted by petitioner, Philip S. Carchman and incorporated by reference in the Joint Appendix. References to "App." are to pages of this Appendix.

[2] At the time the detainer was filed against the respondent, he was arrested and imprisoned in Pennsylvania pending trial. He was tried and convicted on the Pennsylvania charges on March 14, 1979, and sentenced on July 13, 1979. During the period from February, 1979 until November 5, 1979, the respondent sent one or more letters to officials in Mercer County, including New Jersey Judge A. Jerome Moore, Mercer County Prosecutor Anne Thompson, Mercer County Probation Officer Judy Giordano, Chief Mercer County Probation Officer Holloway and Mercer County Assignment Judge George Y. Schoch, requesting final disposition of the detainer. On December 6, 1979 the respondent executed Form II under the Interstate Agreement on Detainers formally requesting transfer to Mercer County to resolve the probation violation charge. Although his letters made no

Accordingly, on March 6, 1980, the respondent, pursuant to 28 U.S.C. § 2254 (1976), filed a petition for a writ of *habeas corpus* in the United States District Court for the Middle District of Pennsylvania seeking dismissal of the detainer in accordance with his rights under Article III(d) of the Agreement. (App. 97-100) On February 3, 1981, the District Court for the Middle District of Pennsylvania, for jurisdictional reasons, transferred the case to the United States District Court for the District of New Jersey and entered an order to that effect. (App. 101). On July 24, 1981, the Honorable Dickinson R. Debevoise, U.S.D.J., entered an order staying respondent's federal action until exhaustion of state court remedies within New Jersey. (App. 81).

On August 24 and 25, 1981, the New Jersey trial court held a hearing on respondent's motion to dismiss the probation violation detainer. Assuming that the Detainer Agreement was applicable to probation violation detainers, and never addressing the issue, the court denied respondent's motion on the ground that he had not substantially complied with the statutory notice requirements. (App. 51-75) In addition, the court ruled respondent's Pennsylvania convictions constituted a violation of probation and resentenced him to consecutive 18 month sentences to be served at the Mercer County Detention Center consecutive to service of his Pennsylvania sentence. (App. 80) On June 22, 1981, the Appellate Division of the Superior Court of New Jersey affirmed the judgment of conviction for the reasons relied upon by the lower court (App. 44); on November 12, 1981, the New Jersey Supreme Court denied a petition for certification. (App. 43)

explicit reference to the Agreement, both lower courts found that his communications effectively notified the Mercer County Prosecutor and court of his demand for final disposition of the detainer under the Agreement and that the State of New Jersey failed to fulfill its obligation to provide a resolution of the complaint within 180 days from when he made his request. *Nash* v. *Jeffes*, 739 F. 2d 878, 885 (3d Cir. 1984) (App. 1-18); *Nash* v. *Carchman*, 558 F. Supp. 641, 651 (D.N.J. 1983) (App. 21-42).

On January 4, 1983, Judge Debevoise held a hearing at the United States Court House at Philadelphia to decide the legality of the detainer. The District Court ruled that Article III of the Agreement is applicable to detainers based upon probation violation complaints and that the State of New Jersey had violated the respondent's rights to a prompt hearing under the Agreement by failing to provide a resolution of the detainer within the required statutory time period. *Nash* v. *Carchman*, 558 F. Supp. 641 (D.N.J. 1983) (App. 21-42). On March 21, 1983, Judge Debevoise vacated the respondent's conviction of a violation of probation and ordered his release from state custody. (App. 42-43)

Petitioner Mercer County Prosecutor appealed to the United States Court of Appeals for the Third Circuit. Petitioner Department of Corrections of the State of New Jersey was allowed to intervene on the ground that the District Court's decision invalidated its policy that parole and probation violation detainers do not fall within Article III of the Agreement. (App. 18) In a carefully considered opinion, the Court of Appeals held that, as a matter of statutory construction, Article III(a) of the Detainer Agreement encompasses probation violation detainers within its scope. *Nash* v. *Jeffes*, 739 F. 2d 878 (3d Cir. 1984) (App. 1-18)[3]. This ruling was based on the

[3] A Petition for Rehearing and Suggestion for Rehearing *En Banc* was denied on August 27, 1984 (App. 103). The mandate was filed on September 4, 1984. (App. 105)

language of the Detainer Agreement and the Council of State Government's legislative commentary. The court concluded "[f]airness to the prisoner and proper allocation of society's resources require that detainers be promptly removed unless the prisoner has been finally and constitutionally sentenced to further imprisonment on the basis of the charge underlying the detainer. This is true regardless of whether the detainer is based on an indictment or on a probation violation." *Id.* at 883 (App. 12).

SUMMARY OF ARGUMENT

This case presents the question of whether a probation violation detainer is an "untried complaint" within the meaning of the phrase "untried indictment, information or complaint" as used in Article III of the Interstate Agreement on Detainers. Article III gives a prisoner the right to demand a final disposition of any detainer based upon an "untried indictment, information or complaint" in the foreign jurisdiction from which the detainer emanates. Article I of the Agreement explicitly provides that the act is addressed to all "charges outstanding against a prisoner," and Article IX mandates that the Agreement "shall be liberally construed so as to effectuate its purposes." Principles of statutory construction dictate that these three articles should be construed together. A joint construction of these three articles logically leads to the conclusion that a probation violation detainer is an "untried complaint" within the intendment of the phrase "untried indictment, information or complaint" as used in Article III. Other provisions of the statute compel the same conclusion.

Legislative history contemporaneous with the Agreement provides further strong support for interpreting the Agreement as enhancing prisoner's rights and applying

Article III to detainers based upon probation violation complaints. The major purpose of the Agreement was to benefit prisoners principally by minimizing the disruptive effect upon rehabilitation caused by the policy of allowing detainers to remain unresolved against a prisoner for an indefinite period of time. Because the effects of a probation violation detainer upon prisoners and programs of treatment do not differ from the effects caused by detainers based upon other charges, it is therefore absolutely consistent with the desires of the legislature to construe the Agreement as incorporating probation violation complaints and affording to prisoners the redress provided by Article III.

Furthermore, because the operative provisions of the Agreement can be so readily applied to dispose of detainers based upon probation violations, applying Article III to probation violation detainers would not impose any significant administrative or financial burdens upon the State. Actually, such application would promote the efficient administration of justice and reduce the expenses incurred in the handling of detainers. Even if application of Article III to probation violation detainers were to result in an increase of governmental burdens, any interest the State has in reducing costs is outweighed by the prisoner's interest in rehabilitation.

The Third Circuit Court of Appeals correctly construed that the phrase "untried indictment, information or complaint" as used in Article III includes probation violation detainers within its scope. The decision of the Court achieves the goals enunciated in the policy statement and legislative history of the Agreement and avoids a literal interpretation of the operative phrase that would defeat the statutory scheme.

ARGUMENT

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT CORRECTLY HELD THAT A PROBATION VIOLATION COMPLAINT IS INCLUDED WITHIN THE MEANING OF THE PHRASE "UNTRIED INDICTMENT, INFORMATION OR COMPLAINT" AS USED WITHIN ARTICLE III OF THE INTERSTATE AGREEMENT ON DETAINERS.

A. The Language Of The Agreement Clearly Indicates That The Drafters Intended The Agreement To Apply To Detainers Based On Probation Violation Complaints.

The Interstate Agreement on Detainers is an interstate compact enacted by forty-eight states, the federal government and the District of Columbia to facilitate interstate resolution of detainers based upon all charges outstanding against prisoners. *Cuyler* v. *Adams*, 449 U.S. 433, 422 (1981).[4] Article III confers upon a prisoner against whom a detainer has been lodged the right to demand that the prosecuting authorities in the receiving state bring him to trial within 180 days of his written request. *N.J. Stat. Ann.* § 2A:159A-3(a). Such a written request constitutes a request for final disposition of all untried charges underlying detainers filed by the receiving state. *N.J. Stat. Ann.* § 2A:159A-3(d). The request is

[4] The final draft of the proposed legislation was circulated by the Council of State Governments in 1957. Council of State Governments, *Suggested State Legislation, Program for 1957*, 80 (1956). The New Jersey Interstate Agreement on Detainers was enacted verbatim shortly thereafter in 1959. *N.J. Stat. Ann.* § 2A:159A-1 *et seq.* In 1970, after the Agreement had been enacted by 28 states, the federal government and the District of Columbia adopted the Agreement in substantially the same form. 18 U.S.C. App. § 2 (1976); Note, *The Interrelationship Between Habeas Corpus Ad Prosequendum, The Interstate Agreement on Detainers and The Speedy Trial Act of 1974: United States* v. *Mauro*, 40 Univ. Pitt. L. Rev. 285, n.3 (1978).

also deemed to waive any extradition proceedings as to all untried charges and as to any sentence that is thereafter imposed on the prisoner in the receiving state which must be served following completion of his sentence in the sending state. *N.J. Stat. Ann.* § 2A:159A-3(c). Failure of the authorities to commence trial within the 180-day period, unless excused for good cause, results in the dismissal of all untried charges. *N.J. Stat. Ann.* § 2A:159A-3(a) and 5(c)[5] When Article III is read in conjunction with Articles I and IX, and other provisions of

[5] In this case, the Third Circuit affirmed the district court's grant of a writ of *habeas corpus* to respondent Nash because the State of New Jersey failed to provide a hearing on the probation violation charge within 180 days of his request for disposition as set forth in Article III of the Detainer Agreement.

Since this Court's decision in *Cuyler* v. *Adams*, 449 U.S. 433 (1981), which established that the Agreement presents a federal question under 42 U.S.C. § 1983 (1981), the Courts of Appeals have held that the Agreement is a federal law for purposes of the *habeas corpus* statutes. 28 U.S.C. §§ 2241, 2254 and 2255 (1976). However, the courts are not in accord as to whether every violation of the Agreement will entitle a prisoner to relief in a *habeas* proceeding. Four circuits, the Third Circuit among them, relying on *United States* v. *Mauro*, 436 U.S. 340, 364-65 (1978) which established that a governmental violation of the Agreement is an absolute defense to an outstanding charge, have held that in view of the central policy of the Agreement and the sanction of mandatory dismissal, a prisoner who shows a violation of the time provisions of the Agreement presents an "exceptional circumstance" that requires *habeas* relief. *Brown* v. *Wolff*, 706 F. 2d 902 (9th Cir. 1983); *Cavallaro* v. *Wyrick*, 701 F. 2d 1273, 1275 (8th Cir.), *cert.* denied, ___ U.S. ___, 103 S. Ct. 3120 (1983); *Johnson* v. *Williams*, 666 F. 2d 842, 844 n.1 (3d Cir. 1981); *United States* v. *Williams*, 615 F. 2d 585, 590 (3d Cir. 1980); *Cody* v. *Morris*, 623 F. 2d 101, 103 (9th Cir. 1980); *Neville* v. *Cavanaugh*, 611 F. 2d 673, 676 (7th Cir. 1979) (dictum), cert. denied, 446 U.S. 908 (1980). Other circuits, injecting a harmless error standard into the Agreement, demand more than a failure to comply with the statutori-

the Agreement, it is clear that the phrase "untried indictment, information or complaint" encompasses a probation violation complaint. *N.J. Stat. Ann.* § 2A:159A-1,3,4,5 and 9.[6]

Although the starting point in every case of statutory construction is the language used by the legislature, the terms of a statute must be interpreted to effectuate the policies intended to be achieved.

---

ly prescribed time requirements before relief will be granted. *Bush* v. *Muncy*, 659 F. 2d 402, 408 (4th Cir. 1981), *cert.* denied, 455 U.S. 910 (1982); *Mars* v. *United States*, 615 F. 2d 704, 707 n.9 (6th Cir.), *cert.* denied, 449 U.S. 849 (1980); *Sassoon* v. *Stynchombe*, 654 F. 2d 371, 374 (5th Cir. 1981); *Fasano* v. *Hall*, 615 F. 2d 555, 558 (1st Cir.), *cert.* denied, 449 U.S. 862 (1980); *Edwards* v. *United States*, 564 F. 2d 652, 653 (2d Cir. 1977). Since the Third Circuit takes the position that a showing of a violation is enough to entitle a prisoner to relief, this issue was not presented or argued below.

[6] Because the facts of this case involve a detainer based on a charge of probation violation, the Third Circuit specifically limited its decision to the probation violation context and held only that a "probation violation is a 'complaint' within the meaning of Article III of the IAD." *Nash* v. *Jeffes*, 739 F. 2d at 880. The court noted that the notice to the prosecutor and judge required by Article III might not inform the proper officials in the parole violation context of the prisoner's request for adjudication under a parole violation detainer. *Id.* at 883, n.11. However, the court declined to decide whether a distinction between parole and probation violation detainers is valid or would lead it to a different result. *Id.* Thus, petitioner's contention that it is "unclear" whether the Third Circuit opinion applies to parole violation detainers is without foundation. (Brief for petitioner Mercer County Prosecutor at 10, n.2) Since the issue of whether a parole violation complaint is a complaint within the scope of the Detainer Agreement was not passed on by the court of appeals and is not presented by the facts of this case, it should not be decided here. *United States* v. *Fleischman*, 339 U.S. 349, 365 (1950).

> When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as is indicated by its various provisions, and give to it such a construction as will carry into execution the will of the legislature. *Brown* v. *Duchesne*, 19 How. 183, 194 (1857).

Kokoszka v. *Belford*, 417 U.S. 642, 650 (1974). The individual parts of the statute cannot be read in isolation from one another because each part derives its particular meaning from the central concept of the statute. *United States* v. *The Heirs of Boisdoré*, 49 U.S. (8 How.) 112, 121 (1850).

The explicit objective of the Interstate Agreement on Detainers is to resolve charges outstanding against a prisoner because they interfere with the prisoner's ability to participate in rehabilitative programs. *United States* v. *Mauro*, 436 U.S. 340, 347 (1978); *N.J. Stat. Ann.* § 2A:159A-1.[7] Article I, which sets forth the Agreement's purposes, applies the statute to all "charges outstanding against a prisoner" and to "detainers based on untried

---

[7] Commentators agree that the adverse effects of detainers generally were the motivating force behind the drafting of the Agreement. *See generally*, Leslie W. Abramson, *Criminal Detainers*, 93 (1979); Bennett, *The Last Full Ounce*, 23 Fed. Prob. 20, 22-23 (June 1959); Bennett, *The Correctional Administrator Views Detainers*, 6 Fed. Prob. 8 (July-September 1945); Burkhart, *Interstate Cooperation in Probation and Parole*, 24 Fed. Prob. 24, 27 (June 1960); Dauber, *Reforming the Detainer System: A Case Study*, 7 Crim. L. Bull. 669, 671 (1971); Wexler & Hershey, *Criminal Detainers in a Nutshell*, 7 Crim. L. Bull. 753, 754 (1971); Yackle, *Taking Stock of Detainer Statutes*, 8 Loyola L.A. L. Rev. 88, 91-94 (1975); Note, *Convicts-The Right to Speedy Trial and the New Detainer Statutes*, 18 Rut. L. Rev. 828, 852 (1964); Note, *Detainers and the Correctional Process*, 4 Wash. U.L.Q. 417, 418-423, 429-431 (1966).

indictments, informations or complaints." *N.J. Stat. Ann.* § 2A:159A-1. Since a probation violation complaint is a "charge outstanding against a prisoner," it is a charge encompassed within Article I of the Agreement. When read in conjunction with Article I, it is evident that the phrase "untried indictment, information or complaint" as used in Article III includes within its scope a probation violation complaint.[8]

This conclusion is buttressed further by Article IX which mandates that "[t]his agreement shall be liberally

[8] One federal court, *United States* v. *Roach*, 745 F. 2d 1252 (9th Cir. 1984); four state courts of last resort, *Clipper* v. *Maryland*, 295 Md. 303, 455 A. 2d 973 (1983); *Padilla* v. *Arkansas*, 279 Ark. 100, 648 S.W. 2d 797 (1983); *State* v. *Knowles*, 275 S.C. 312, 270 S.E. 2d 133 (1980); *Suggs* v. *Hopper*, 234 Ga. 242, 215 S.E. 2d 246 (1975); and five state appellate courts, *Irby* v. *State of Missouri*, 427 So. 2d 367 (Fla. Dist. Ct. App. 1983); *People ex rel. Capalongo* v. *Howard*, 87 A.D. 2d 242, 453 N.Y.S. 2d 45 (1982); *People* v. *Jackson*, 626 P. 2d 723 (Colo. Ct. App. 1981); *Blackwell* v. *State*, 546 S.W. 2d 828 (Tenn. Crim. App. 1976); *People* v. *Batalias*, 35 A.D. 2d 740, 316 N.Y.S. 2d 245 (1970), have found that a probation violation complaint is not included within the scope of the Interstate Agreement on Detainers. None of these courts examined the legislative history of the IAD or supported their conclusions with persuasive analysis. One state appellate court, however, has found that such a complaint is within the scope of the Agreement. *Gaddy* v. *Turner*, 376 So. 2d. 1225 (Fla. Dist. Ct. App. 1979), *rev'd*, *Irby* v. *State of Missouri*, *supra*. In this matter, the Court of Appeals for the Third Circuit rested its decision upon the cogent analysis of the district court remarking that:

> Although the authority on the other side is entitled to considerable weight, the strength of the district court's analysis far exceeds that of the opinions reaching the opposite result.

Nash v. *Jeffes*, 739 F. 2d at 881. (1984). Petitioner Mercer County Prosecutor erroneously supports his argument with reference to cases dealing with parole violation detainers. *Hopper* v. *United States Parole Comm'n*, 702 F. 2d 842 (9th Cir. 1983); *Hernandez* v.

construed so as to effectuate its purposes." *N.J. Stat. Ann.* § 2A:159A-9. To give effect to Article IX a probation violation complaint must come within the scope of Article I. Any contrary construction would render the mandate in Articles I and IX meaningless. Such a result could not possibly have been within the contemplation of the legislature which sought to alleviate the adverse effects of all charges outstanding against a prisoner.[9] Con-

United States, 527 F. Supp. 83 (W.D. Okla. 1981); *Sable* v. *Ohio*, 439 F. Supp. 905 (W.D. Okla. 1977); *Cart* v. *DeRobertis*, 117 Ill. App. 3d 587, 453 N.E. 2d 153 (1983); *Maggard* v. *Wainwright*, 411 So. 2d 200 (Fla. Dist. Ct. App. 1982); *Wainwright* v. *Evans*, 403 So. 2d 1123 (Fla. Dist. Ct. App. 1981); *Buchanan* v. *Michigan Dept. of Corrections*, 50 Mich. App. 1, 212 N.W. 2d 745 (1973).

[9] Petitioners urge this Court to follow the doctrine of strict literalism and adopt a narrow, technical interpretation of the terms contained in Article III. (Brief for petitioner Mercer County Prosecutor at 11-13; Brief for petitioner New Jersey Department of Corrections at 22-24.) In advancing this argument, petitioners ignore Articles I and IX and offer no explanation for their inclusion in the Agreement. Under petitioners' statutory construction, Article III supplants Articles I and IX, whereas clearly the legislature intended all operative provisions of the Agreement to be subordinate to the latter. "The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature . . ." C.D. Sands, 2A Sutherland, *Statutes and Statutory Construction* § 46.07 (1984). Likewise, the decision in *United States* v. *Roach*, 745 F. 2d 1252 (9th Cir. 1984) is similarly flawed. There is no discussion of Articles I and IX and a complete disregard of the absurd results that a literal construction produces. (See, n. 12, *infra*.)

Courts regularly reject the doctrine of literalism when it would defeat the purpose of the legislation. Under the Uniform Criminal Extradition Act, a related subject matter area, the courts have held that a person charged with a parole or probation violation is "charged with a crime" and thus, have rejected a literal interpretation of the phrase because it would lead to an unacceptable result. *Salazar* v. *Eads*, 466 F. 2d 765 (7th Cir. 1972); *People* v. *Mallon*, 218 A.D. 461,

sequently, when the Third Circuit Court of Appeals held that the phrase "untried indictment, information or complaint" in Article III was not limited to untried criminal offenses and included probation violation complaints, it was merely giving the statutory language the plain meaning the legislature intended it to have.[10]

Other operative provisions of the Agreement compel the same conclusion. A probation violation complaint is

---

218 N.Y.S. 432 (1926); Uniform Criminal Extradition Act, 11 U.L.A. 51 (Supp. 1980). In view of this broad interpretation of the phrase "charged with a crime" to include probation violation charges under the Extradition Act, the position advanced by the *Amici* Attorneys General that they are not criminal charges for purposes of the Agreement is inherently contradictory. (Brief for *Amici* Attorneys General at 18).

[10] One state, Kentucky, has amended its statute to apply to detainers based upon violations of probation and parole. *Ky. Rev. Stat* § 440.455 (1976). The amendment provides in pertinent part:

> All provisions and procedures of KRS 440.450 shall be construed to apply to any and all detainers based on unheard, undisposed of, or unresolved affidavits and warrants charging violations of the terms of probation and parole.

Ky. Rev. Stat. § 440.455(2) (1976). The amendment, however, does not indicate that a probation violation complaint was not encompassed within the Agreement originally, but rather reflects a declaration of original intent. As one court has observed:

> [The Kentucky Amendment] is simply declaratory of the intent and effect of the language of the uniform law . . . which encompasses detainers based on complaints generally as well as indictment or information.

Maggard v. *Wainwright*, 411 So. 2d at 203 (Wentworth, J., dissenting). That this is so is made evident by the fact that the notification procedures in Article III were not changed. Obviously the Kentucky legislature felt that the original language of the operative provisions of the Agreement applied both to probation and parole violation complaints. Because the language of the statute is sufficiently definitive of the scope of Article III legislative amendment is not needed.

also encompassed within the meaning of the phrase "untried indictment, information or complaint" as it is used in Articles III(c), III(e) and V(d). *N.J. Stat. Ann.* § 2A:159A-3 and 5. Article III(c) requires the warden to inform the prisoner of "any detainer" irrespective of its underlying basis and of "his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based." Since this provision omits the word "untried" and applies to all detainers, it is evident that the legislature was not espousing a strict and narrow construction of the terms "indictment, information or complaint."[11] Article III(e) compels the pris-

---

[11] The development of the law has shown that the terms "untried complaint" and "trial" have never had a static meaning. A complaint, unlike an indictment or information, has an elastic definition. A complaint, for example, is defined in the *Federal Rules of Criminal Procedure* as "a written statement of the essential facts constituting the offense charged." *Fed. R. Crim. P.* 3. Since a probation violation complaint is a "written statement . . . constituting the offense charged," it is a "complaint" within the meaning of the rules and is "untried" until it has been adjudicated and a final judgment entered.

Similarly, a parallel has been drawn between a "trial" and a revocation hearing for purposes of determining the rights of an accused. *Moody* v. *Daggett*, 429 U.S. 78, 90 (1976) (Stevens, J. and Brennan, J., dissenting). Additionally, the Ninth Circuit Court of Appeals has held that the term "trial" within Article III of the Interstate Agreement on Detainers includes sentencing as well as trial on the merits. *Tinghitella* v. *State of California*, 718 F. 2d 308, 311 (9th Cir. 1983). "Both the rehabilitative and fair treatment purposes of the IAD would be better effectuated by construing trial to include sentencing. A prisoner with foreknowledge of a time certain for imprisonment in the receiving state (here, California) presumably will more easily undergo rehabilitation than one with knowledge merely of the range of possible sentences." *Id.* n. 5 at 311. *Contra*, *Gaches* v. *Third Judicial Dist.*, 416 F. Supp. 767 (W.D. Okla. 1976); *People* v. *Randolph*, 85 Misc. 2d 1022, 381 N.Y.S. 2d 192 (Sup. Ct. 1976).

oner to appear, while in the receiving State, in any Court where his presence may be "required to effectuate the purposes of the Agreement." *N.J. Stat. Ann.* § 2A:159A-3(e). Since the resolution of a probation violation complaint effectuates the purpose of the Agreement, a detainer based upon such a charge falls within the ambit of Article III(e). *Id.*

Article V(d), which establishes procedural machinery for implementing, and imposes sanctions for violating, Articles III and IV, permits prosecution in the receiving State of "*any other charge* or *charges* arising out of the same transaction" (emphasis added) that leads to filing of a detainer based upon an untried indictment, information or complaint. *N.J. Stat. Ann.* § 2A:159A-5(d). Since a probation violation complaint can arise out of the same criminal transaction that gives rise to an indictment, information or complaint, Article V comprehends probation violation charges.[12]

The interpretation of the phrase "untried indictment, information or complaint" advanced by the petitioners

---

[12] Article V(d) provides:

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charges contained in 1 or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

Since Article V(d) includes on its face probation violation complaints, it would be ludicrous to suppose that Article III does not. Moreover, a prisoner in State A who is both indicted and charged with a probation violation complaint in State B would be entitled to dispose of the detainers on both charges. Under the petitioners' construction, a

cannot be reconciled with the clear statement that the statute applies to "all charges outstanding against a prisoner" and is primarily designed to dispose expeditiously of detainers. *N.J. Stat. Ann.* § 2A:159A-1. This position also produces anomalous results that the legislature could not have intended.[13] Because an interpretation of a statute that defeats its manifest object must defer to one that harmonizes the act as a whole, this Court must affirm the Third Circuit Court's interpretation of the statute.

B. The Legislative History Of The Interstate Agreement On Detainers Supports The Interpretation Of The Statute Adopted By The Third Circuit Court Of Appeals.

Even if the statutory language did not compel the conclusion that Article III of the Detainer Agreement includes probation violation complaints, the legislative history of the Agreement would do so. The plain meaning rule is "rather an axiom of experience than a rule of law and does not preclude consideration of persuasive evidence if its exists." *Boston Sand and Gravel Co.* v. *United States*, 278 U.S. 41, 48 (1928). Chief Justice Marshall long ago observed that "[w]here the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived . . ." *United States* v. *Fisher*, 6 U.S. (2 Cranch) 355, 384 (1804).

The relevant legislative history can be found in documents prepared under the auspices of the Council of State

---

prisoner in State A who is charged merely with a violation of probation in State B would not be entitled to invoke the provisions of the Interstate Agreement on Detainers. A statutory construction that leads to such an anomalous result must be eschewed in favor of one that gives meaning to the parts as well as the whole. *See, American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 68 (1982).

[13] *See*, n. 12, *supra*.

Governments. *United States* v. *Mauro*, 436 U.S. 340, 349-356 (1978). The federal legislative history is less instructive because "Congress enacted the Agreement into law . . . with relatively little discussion and no apparent opposition." *Id.* at 353.

In 1948, at the instance of the Parole and Probation Compact Administrators' Association, a Joint Committee on Detainers was formed to deal with the administrative problems arising from the use of detainers.[14] At the time the Committee was formed, the existing detainer system was unregulated and fraught with problems both for law enforcement officials and inmates. The cavalier filing of detainers and the bitter consequences they engendered caused one commentator to observe that "[t]he use of detainers . . . must be branded a vestigial remnant of the age-old concept of retributive justice. No purpose is served except the destructive expression of a primitive urge for vengeance." Bennett, *The Last Full Ounce*, 23 Fed. Prob. 20 (June 1959).

[14] In addition to representation from this group, the Committee included members from the National Association of Attorneys General, the Section on Criminal Law of the American Bar Association, the National Conference of Commissioners on Uniform State Laws and the American Correctional Association. In 1955 and 1956, the Committee was reconstituted under the auspices of the Council of State Governments and membership was augmented to include representation from the National Probation and Parole Association, the National Association of County and Prosecuting Attorneys and the United States Department of Justice. Council of State Governments, *Suggested State Legislation, Program for 1959*, 167 (1958).

The Joint Committee recommended the adoption of the following "guiding principles":

> I. *Every effort should be made to accomplish the disposition of detainers*[15] *as promptly as possible.* This is desirable whether the detainer has been filed against an individual who has not yet been imprisoned or against an inmate of a penal institution. Prompt disposition of detainers is a proper goal whether the detainer has been filed by a *local prosecutor, a state prison, a parole board, or a federal official.* Detainers lodged on suspicion should not be permitted to linger without action.
>
> II. There should be assurance that any prisoner released to stand trial in another jurisdiction will be returned to the institution from which he was released . . .
>
> III. *Prison and parole authorities should take prompt action to settle detainers which have been filed by them.* Prison officials and parole boards recognize that detainers create serious problems with respect to prisoners under their jurisdiction. Therefore, when such authorities file detainers against prisoners in other jurisdictions, they should cooperate fully to effect a prompt settlement of all detain-

[15] The Council defined a detainer as

> a warrant filed against a person already in custody with the purpose of insuring that he will be held for the authority which has placed the detainer. Wardens of institutions holding men who have detainers on them invariably recognize these warrants and notify the authorities placing them of the impending release of the prisoner. Such detainers may be placed by various authorities under varying conditions, for example, when an escaped prisoner or a parolee commits a new crime and is imprisoned in another state; or where a man not previously imprisoned commits a series of crimes in different jurisdictions.

Council of State Governments, *Suggested State Legislation, Program for 1956*, 60 (1955). Such a broad definition clearly encompasses detainers based on probation violation complaints.

ers. They should promptly give notice as to whether they insist that the prisoner be returned at the end of his present sentence, or whether they will agree to a concurrent parole. Every effort should be made to cooperate in planning effective rehabilitation programs for the prisoner.

IV. *No prisoner should be penalized because of a detainer pending against him unless a thorough investigation of the detainer has been made and it has been found valid.* It should be the duty of prison officials, parole authorities and judges to make such investigations before denying the prisoner privileges, probation or parole, or before imposing unusually heavy sentences upon the prisoner.

V. All jurisdictions should observe the principles of interstate comity in the settlement of detainers, and each should bear its own proper burden of the expenses and effort involved in disposing of charges and settling detainers. There should be full faith and credit given to the rights of any state or jurisdiction asserting them.

Council of State Governments, *Suggested State Legislation, Program for 1956*, 61-62 (1955) (emphasis added). Although these principles were non-binding, they were meant to serve as a code of conduct for prosecutors, courts and prison officials "to the end that detainers [would] not hamper the administration of corrections programs and the effective rehabilitation of criminals." *Id.* at 61.

Later reconstituted under the auspices of the Council of State Governments, the Committee drafted several proposals concerning detainers. The central preoccupation of the drafters of the Agreement was the negative psychological impact of the detainer upon a prisoner and the adverse effect upon programs of prisoner treatment and rehabilitation, particularly with respect to the

impediment detainers placed upon the corrections official's ability to plan and administer these programs. The drafters perceived that the uncertainty the detainers cast over the prisoner's future undermined the incentive for self-reform and permanently embittered the offender against society. The practice of allowing a detainer to pend unresolved for a period of years reinforced the impression that society was going to "absurd lengths to inflict the maximum misery upon the prisoner." Bennett, *The Last Full Ounce*, 23 Fed. Prob. 20, 21 (June 1959) The Council observed:

> The prison administrator is thwarted in his efforts toward rehabilitation. The inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program. He often must be kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps. In many jurisdictions he is not eligible for parole; there is little hope for his release after an optimum period of training and treatment, when he is ready for return to society with an excellent possibility that he will not offend again. Instead, he often becomes embittered with continued institutionalization and the objective of the correctional system is defeated.

Council of State Governments, *Program for 1956* at 60. Thus, it was primarily to correct the adverse effects of detainers upon prisoners and corrections officials that the Agreement was drafted. *United States* v. *Mauro*, 436 U.S. at 360.[16] Since a detainer based upon a probation

---

[16] The decision in *Mauro* supports this view. Writs of *habeas corpus ad prosequendum* issued by a federal court are immediately executed and, therefore, "enactment of the Agreement was not necessary to achieve their expeditious disposition." *Mauro*, 436 U.S.

violation complaint causes the same adverse effects as a detainer based upon any other charge, it is consistent with the legislative history to conclude that the drafters intended probation violation detainers to fall within the intendment of the Agreement.

Petitioners misconceive the fundamental function of the Agreement as a reform measure when they claim that the act only guards against the filing of "nuisance" detainers whose supporting charges are completely unsubstantiated. Because a probation violation detainer based upon conviction of another crime can never be frivolous, the petitioners contend that it is perfectly permissible to leave it unresolved for an infinite number of years. There is absolutely nothing in the legislative history or the Agreement itself to support this argument. The entire thrust of the guiding principles and the broad purposes expressed in Articles I and IX compel a conclusion that a probation violation complaint should be subject to a prompt resolution within the purview of the Agreement.

While the explicit purposes of the Agreement are clearly rehabilitative, it has nevertheless come to be recognized that the Agreement has collateral consequences on a prisoner's right to speedy trial. However, these consequences were not the primary focus of the act; they cannot be invoked to thwart the legislative intent and exclude detainers based upon probation violation complaints from the protections conferred by the Agreement. In 1957, "when the detainer statute was drafted and first published, a prison inmate's constitutional right to a speedy trial had not yet been clearly established." Yack-

---

at 360. "The adverse effects of detainers that prompted the drafting and enactment of the Agreement are thus for the most part the consequence of the lengthy duration of detainers." 436 U.S. at 360.

le, *Taking Stock of Detainer Statutes*, 8 Loyola L.A. L. Rev. 88, 110 (1975). At that time, "the problems associated with detainers were seen as administrative, involving substantial difficulties for inmates but not rising to constitutional significance." *Id.* at 110. The petitioners' thesis that the Agreement was designed to effectuate speedy trial rights misreads the legislative history. Therefore, petitioners' argument that the provisions do not extend to probation violation complaints because they do not implicate speedy trial rights must fail.

Although it is obvious that the enactment of the statute by the federal government directly followed this Court's decisions in *Klopfer* v. *North Carolina*, 386 U.S. 214 (1967) and *Smith* v. *Hooey*, 393 U.S. 374 (1969), Congress did not enact the statute, as the legislative history shows, solely to protect speedy trial rights. In 1970, when the federal government and the District of Columbia adopted the Agreement both the House and Senate Reports stated that:

> *The Attorney General has advised the committee that a prisoner who has had a detainer lodged against him is seriously disadvantaged by such action.* He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing. Although a majority of detainers filed by States are withdrawn near the conclusion of the Federal sentence, the damage to the rehabilitation program has been done because the institution staff has not had sufficient time to

develop a sound pre-release program. (emphasis added)

S. Rep. No. 91-1356, 91st Cong. 2nd Sess.; H.R. Rep. No. 91-1018, 91st Cong. 2nd Sess. reported in 1970 U.S. Code Cong. & Ad. News 4864, 4866. As this Court has stated "[t]he reference in the Committee Reports to the recommendations of the Attorney General . . . indicates that Congress was motivated, not only by the desire to aid States in obtaining federal prisoners, but also by the desire to alleviate the problems encountered by prisoners and prison systems as a result of the lodging of detainers." *United States* v. *Mauro*, 436 U.S. at 356.[17]

In the discussion leading to passage of the Agreement in the House of Representatives, a sponsor of the bill, Richard H. Poff from the State of Virginia, remarked:

> . . . if a defendant is uncertain as to whether he will have to serve another jail term he is less likely to have the motivation to become successfully rehabilitated. *This latter consideration is especially important in view of the fact that the basic purpose of the entire penal system is to prepare its inmates to reenter society as law-abiding citizens.* (emphasis added)

H.R. 6951, 91st Cong., 2nd Sess., 116 Cong. Rec. 13997, 14000 (1970). Representative Poff concluded ". . . in view of these considerations, I feel that the Interstate Agreement on Detainers benefits both defendant and prosecutor, as well as society generally." *Id.* As the above discussion of the legislative history reveals Congress was well aware of the drafters' primary purpose to alleviate the adverse effects of detainers, while simultaneously recognizing the potential of the statute to have some impact upon effectuating a prisoner's right to speedy trial.

The Third Circuit Court of Appeals deduced from the legislative history that the "drafters of Article III were concerned with the need to settle outstanding charges against prisoners in order to enable the prisoners to participate in rehabilitation programs." *Nash* v. *Jeffes*, 739 F. 2d at 882. The Agreement was primarily designed to safeguard prisoner rights and it is totally consistent with legislative intent to construe the Agreement to apply Article III to detainers based upon probation violation complaints. Contrary to petitioners' assertion, the Third Circuit Court of Appeals did not legislate new policy, but merely carried out the intent expressed in the statutory language and legislative history.

C. Application Of Article III To Probation Violation Complaints Effectuates The Legislative Policies Of The Detainer Agreement.

Petitioners claim that application of Article III to probation violation detainers does not result in any of the benefits the legislature intended the Agreement to have because of the nature of the probation violation charge.

---

[17] A further indication that Congress did not view the Agreement as a mechanism designed primarily to protect a defendant's right to a speedy trial is the passage of the *Speedy Trial Act of 1974*, 18 U.S.C.A. § 3161(j) (West Supp. 1984). This Act places an affirmative obligation upon the United States Attorney to take steps promptly to obtain a prisoner for trial once he learns of his place of incarceration and thereby rectifies what commentators had long recognized to be a significant weakness of the Agreement's ability to implement speedy trial rights. See also the ABA Report on Standards for Criminal Justice, *Standards Relating to Speedy Trial* § 3.1 (1967) which places the same burden on the prosecutor.

It is clear, therefore, that to the extent the Agreement applies to detainers based on all charges it accords defendants rights greater than those afforded by the speedy trial guarantee of the Constitution. On the other hand, because the Agreement does not require a prosecutor to file a detainer, its speedy trial protections are inadequate.

To arrive at this conclusion petitioners wrongly assert that each and every possible disposition of a probation violation detainer will have no beneficial effect upon the prisoner and the administration of correctional programs. However, as the Third Circuit Court of Appeals correctly observed "[a] quick adjudication of the charges underlying a detainer is desirable, not only to vindicate a prisoner's constitutional right to a speedy trial, but also to provide certainty as to the time of his scheduled release, in order to aid in his rehabilitation." *Nash* v. *Jeffes*, 739 F. 2d at 883.

Restrictions are placed upon inmates against whom a detainer is lodged under the assumption that they pose a greater escape risk than other inmates since they face the possibility of serving a future sentence of unknown duration. Note, *Detainers and the Correctional Process*, 4 Wash. U.L.Q. 417, 419 (1966). These restrictions are placed upon inmates routinely and regardless of the nature of the charge underlying the detainer. *Id.* at 419. The presence of the detainer generates uncertainty about the prisoner's future by leaving unresolved the terms of any future sentence that may eventually be imposed. This uncertainty affects both prisoner and corrections official alike. The former suffers the anxiety and depression from the threat of having to serve a consecutive term; the latter the inability to design a program of effective treatment not knowing the prisoner's certain release date. To ascertain the release date at the most efficacious time, ". . . charges underlying detainers [should] be finally adjudicated at the beginning, rather than the end, of the sentence." *Nash* v. *Jeffes*, 739 F. 2d at 883.

Resolution of detainers based upon probation violation complaints fulfills the beneficial aims of the act. A court exercises a wide latitude of discretion at a probation

revocation proceeding; indeed, the court may elect not to revoke probation, or to impose any sentence that could have been imposed at the original time of sentencing. *N.J. Stat. Ann.* § 2C:44-5(c). Although conviction of a crime while on probation raises a presumption that probation will be revoked, it does not restrict the court's discretion. *State* v. *Serio*, 168 N.J. Super. 394, 403 A. 2d 49 (Super. Ct. Law Div. 1979). Where the new conviction is for a minor offense revocation may not be warranted. Abramson, *Criminal Detainers*, 86 (1979). Moreover, the court is at liberty to impose either concurrent or consecutive sentences. *N.J. Stat. Ann.* § 2C:45-3(b). Should a concurrent sentence be imposed it would alleviate the restrictions placed upon the inmate.[18]

Early adjudication of the charge also enables the court to base its decision on fresh evidence. Not all probation violation detainers will be based upon the out-of-state conviction.[19] Cases involving technical charges of non-

---

[18] The New Jersey Department of Corrections Standard relating to eligibility criteria for reduced custody consideration provides:

D. Detainers, Open Charges Bail

A detainer is a warrant for formal authorization to hold an inmate for prosecution or detention by federal, state or out-of-state law enforcement agencies.

Inmates, with detainers from federal authorities or other states shall be eligible to be considered for gang minimum and full minimum custody status, *provided* the detainers are for concurrent sentences which do not exceed the maximum of the term currently being served.

N.J. Dep't of Corrections, Standard 853.5D (April 11, 1983).

[19] Detainers of this sort are not uncommonly placed. *See, e.g. Padilla* v. *State of Arkansas*, 279 Ark. 100, 648 S.W. 2d 797 (1983). While Padilla was serving a sentence in California for an unrelated crime, Arkansas placed a detainer against him based upon an alleged failure to report to his probation officer. The petitioners' reliance upon *Padilla* ironically disproves their thesis that a detainer based upon a technical violation is unlikely to be encountered.

compliance with the terms of probation may require the testimony of live witnesses. A delay in the proceeding resuits in the fading of memories, loss of witnesses, or essential evidence, exactly the same concerns that underlie a prisoner's constitutional right to a speedy trial, and thereby deprives the inmate of an effective defense when the hearing is held at a later date. The Third Circuit found this distinct possibility serious enough to warrant speedy disposition. *Nash* v. *Jeffes*, 739 F. 2d at 882.[20]

In the probation violation setting, delay in disposition forces a consecutive sentence and offers no benefits to either the prisoner or the State. Since there is no mechanism by which to apply the sentence on the probation violation retroactively, if the Agreement is held not to apply to probation violation complaints, a judge would never be able to impose concurrent sentences and the prisoner would be denied the ensuing benefit. The State that lodges the detainer would incur the expense of incarcerating the prisoner for the additional term. The State that has custody of the prisoner while the detainer

[20] Petitioner Department of Corrections distorts the Third Circuit opinion when it asserts that the Circuit Court "acknowledged" that a prisoner's interest in an early adjudication does not "outweigh the administrative burden and expense to the state in conducting the revocation hearing prior to completion of the out-of-state sentence." (Brief for petitioner Department of Corrections at 27). All the court did was to note that conviction of a new crime is *prima facie* proof of the probation violation. It made no suggestion that this type of violation should preclude a prisoner from an early adjudication of the detainer because of the administrative burden and expense to the State. To the contrary, the Court stated that the cost of an additional trip, given the burdens the detainer placed on the prisoner, did not outweigh the prisoner's interest in quick adjudication irrespective of the nature of the probation violation. *Nash* v. *Jeffes*, 739 F. 2d at 883.

is pending would bear the additional expense of keeping the prisoner in its maximum security facility since prisoners with detainers lodged against them are perceived as escape risks.

The supposed advantage to delay, that of affording a more informed decision to be made at the revocation hearing based upon the inmate's record of progress, is simply not attainable in the interstate setting. *Cf. Moody* v. *Daggett*, 429 U.S. 78, 89 (1976).[21] A court sitting in a jurisdiction other than the one where the prisoner is incarcerated is not in a position to follow the inmate's

[21] Although this Court has determined that a prisoner does not have a constitutional right to a prompt parole violation hearing in the intrastate setting, *Moody* v. *Daggett*, 429 U.S. 78 (1976), and several lower courts have determined that this right does not exist in the interstate setting when different and autonomous parole authorities are involved, *United States ex rel. Caruso* v. *United States Board of Parole*, 570 F. 2d 1150 (3rd Cir. 1978), *cert.* denied, 436 U.S. 911 (1978), it does not follow that a prisoner neither has a constitutional right to a prompt probation revocation hearing in the interstate setting, nor a statutory right to one under the Agreement. In *Moody*, this Court expressly reserved the determination of whether the potential of adverse actions by different and autonomous parole boards would warrant a different conclusion, and this possibility remains distinctly open in spite of lower court rulings. 429 U.S. at 88. Additionally, no lower court has made a specific determination as to whether a constitutional right to a prompt probation violation hearing would be recognized in the interstate setting since probation raises concerns that are not present in parole violation proceedings. Moreover, statutes may always confer greater rights upon individuals than those that are recognized under the federal or state constitutions which merely reflect the bare minimum level of rights accorded to all. *Wolff* v. *McDonnell*, 418 U.S. 539, 557 (1974). In this respect, the Agreement gives effect to the legislatively created right to serve a prison sentence unencumbered by the adverse effects of detainers.

progress at the institution and, therefore, not in a position to make a more informed decision about revocation at the end of the outside term. Rather, the delay deprives the court of the opportunity to integrate its sentence with that of the other jurisdiction and, thus, directly contravenes the intent of the drafters. Council of State Governments, *Program for 1956* at 60.

In the interstate setting, delay hinders rather than furthers any legitimate state interest. It creates a backlog of cases and promotes a system of deciding cases on the basis of stale evidence. It is not even clear that the cost of the "return trip," which would be incurred by the State if the Agreement is interpreted to apply to probation violation detainers, exceeds the cost of delaying the hearing until the expiration of the intervening sentence. Because the operative provisions of the Agreement can be so readily applied to dispose of detainers based on charges of probation violation, applying the Agreement to probation violation detainers would not impose any significant administrative or financial burdens upon the State.[22]

---

[22] Article III requires a prisoner to deliver his demand for final disposition of the charge underlying the detainer to "the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction." *N.J. Stat. Ann.* § 2A:159A-3(a). This notice requirement correctly informs those with jurisdiction over a probation violation complaint of the prisoner's request for final disposition of the detainer.

In 1970, the Center for Criminal Justice at Harvard Law School undertook a detailed study of the detainer system at four major prisons of the Commonwealth of Massachusetts. Dauber, *Reforming the Detainer System: A Case Study*, 7 Crim. L. Bull. 669, 673 (1971). Approximately 10 percent of the records of all inmates in those prisons were reviewed and analyzed. *Id.* at 673. It was found that of the 202 inmates studied in the sample population, a total of 108 detainers had been lodged against them at some time during their present incarceration. *Id.* at 675. It was further found that only 19 percent (21 detainers) of the total number of detainers in the sample were based on parole and probation violation charges. *Id.* at 676. This figure represented the smallest percentage of detainers identified by the Center's study with the exception of those detainers grouped in the "miscellaneous" category. The results of this study, the first and apparently only empirical study of the detainer system, contrast sharply with and suggest that the estimate of the *Amici* Attorneys General that a significant number of the 27,177 persons wanted nationally for probation violations are likely to be inmates against whom probation violation detainers are pending is grossly mistaken. (Brief for *Amici* Attorneys General at p. 6)

The Third Circuit Court of Appeals correctly rejected a narrow and technical interpretation of the Agreement. In so doing, the Court avoided a construction of the statute that would defeat the very purposes for which it was enacted. By adopting an interpretation that fulfills the statute's aims, the Court properly met its judicial responsibilities to effectuate legislative intent.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

JOSEPH H. RODRIGUEZ
Public Defender of New Jersey

LOIS DE JULIO
First Assistant Deputy
Public Defender
Counsel of Record

JOHN BURKE III
Assistant Deputy Public Defender

Appellate Section
20 Evergreen Place
East Orange, New Jersey 07018
(201) 266-1800
Attorneys for Respondent

M. VIRGINIA BARTA
Assistant Deputy Public Defender